STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1316

Mark Krampf,
Appellant,

vs.

University of Minnesota, et al.,
Respondents.

Filed June 26, 2023
Affirmed
Bryan, Judge

Blue Earth County District Court
File No. 07-CV-20-2164

Mark Krampf, Moose Lake, Minnesota (pro se appellant)

Douglas R. Peterson, Dan Herber, Office of the General Counsel University of Minnesota, Minneapolis, Minnesota (for respondents)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant challenges the district court's denial of his motion to amend his complaint and the district court's grant of summary judgment in favor of respondents. Because we conclude that the district court did not abuse its discretion in denying appellant's motion to amend, and because there is no genuine issue of material fact regarding whether

respondents violated the Minnesota Government Data Practices Act (MGDPA), Minn. Stat. §§ 13.01-.90 (2022), we affirm.

FACTS

On November 1, 2018, appellant Mark R. Krampf—a former student and employee of respondent University of Minnesota (the University)—submitted the following MGDPA request to the University:

> Greetings Office of Records and Information Management,
>
> Pursuant to the [MGDPA] § 13.04 you are requested to answer the following:
>
> 1. Am I, Mark R. Krampf, an individual, the subject of stored data (in any and all formats by the University of Minnesota or any of its entities)?
>
> If Yes to Question 1, then:
>
> Please accept this written notice as a request for inspection access to all private, public, or confidential data. In addition, it is requested that the University informs me (Mark R. Krampf, an individual) of both the content and meaning of the data.
>
> Please inform me, Mark R. Krampf, immediately or within the ten (10) day statutory requirements if immediate compliance is not possible."
>
> ***THIS REQUEST SHALL NOT BE CONFUSED-WITH, LINKED-TO, OR ASSOCIATED-WITH ANY OTHER REQUESTS, ISSUES, LEGAL CASES, ETC. INVOLVING THE UNIVERSITY OF MINNESOTA***[1]

[1] According to an affidavit submitted by the University, Krampf has "had certain past interactions with various University offices or units, including involving MGDPA requests, litigation, and law enforcement matters." At the time of this MGDPA request, Krampf was involved in litigation with the University over a separate MGDPA request. The district court granted summary judgment in favor of the University in that case and this court

In response to Krampf's request, the University began to upload responsive data into a secure electronic data portal. The University had uploaded a portion of the data by November 9, 2018 and finished uploading the remaining data by November 15, 2018—ten business days following Krampf's request.[2] In total, the University provided Krampf with more than 2,400 pages of responsive materials. The University sent Krampf a letter on November 15, 2018, notifying him that the data was available and explaining that certain information had been redacted, including private personnel information, student educational data, attorney-client privileged information, and security information.

Krampf was not satisfied with the information that the University provided in response to his request. He mailed a follow-up letter to the University and used the University's data portal to send a second message seeking confirmation that the University had fully responded to his request. The University did not provide any additional data in response to Krampf's follow-up messages, and on December 21, 2018, the University responded to Krampf that it had "processed your request, responsive materials were produced to you . . . , and the request was closed." Still unsatisfied with the University's response, Krampf initiated this lawsuit against the University and respondent "University of Minnesota Board of Regents Jane/John Doe" (also referred to in this opinion as "the University") in June 2020.

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affirmed. *Krampf v. Univ. of Minnesota*, No. A19-1753, 2020 WL 3410191 (Minn. App. June 22, 2020) (*Krampf I*).

[2] Minnesota Statutes section 13.04, subdivision 3, requires a response to a request by a data subject "within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible."

After several months during which time the parties engaged in discovery, the district court held a scheduling conference in November 2020 and directed Krampf to "identify specific documents which he seeks from [the University]." Three months later, in February 2021, the district court issued an order noting that Krampf had not yet responded to the district court's directive. The district court ordered that "unless [Krampf] amends his complaint or otherwise provides written notice of his intent to prosecute this matter by identifying the documents he seeks within two weeks of this order, [Krampf's] claims against [the University] shall be dismissed without prejudice." After two weeks, the district court dismissed Krampf's claims because Krampf had not yet responded.

Krampf filed a motion to amend his complaint to add two additional defendants and an additional claim for declaratory judgment. Krampf's proposed amended complaint was significantly longer than his initial complaint and contained numerous new factual allegations and legal assertions. These included allegations that the University had provided "false and fraudulent" responses during discovery and that the University's data access policy violated the MGDPA, *see* Minn. Stat. § 13.025, subds. 2-3.

The district court rescinded its dismissal of the action when it received Krampf's motion to amend his complaint.[3] The district court then denied Krampf's motion to amend his complaint. The district court noted that while Krampf's proposed amended complaint was "considerably longer and includes more allegations than his original complaint . . . there are only two new elements"—the proposed new defendants and the proposed new

[3] The district court did so because, although it received Krampf's motion after it dismissed the action, the postmark indicated that the motion was timely.

claim for declaratory relief. The district court reasoned that Krampf's undue delay in adding the new defendants, his "failure to explain his delay," and the need to conduct discovery with respect to those defendants weighed against granting the proposed amendment. The district court also reasoned that allowing the addition of a declaratory judgment claim would be futile.

After the denial of his motion to amend his complaint, Krampf sought a scheduling order and the opportunity to conduct additional discovery. In October 2021, the district court issued a scheduling order that provided for the completion of discovery by January 28, 2022. Krampf did not serve any additional discovery requests on the University or bring any motions to compel discovery.

Following the close of the discovery period, the University moved for summary judgment. The University's motion and supporting affidavits described the University's response to Krampf's request in detail. In an affidavit, Susan McKinney, the University's MGPDA responsible authority[4] at the time of Krampf's request, explained that she "contacted multiple staff in the University's President's Office, Board of Regents Office, Office of General Counsel, Human Resources, Medical School, Student Records, and other offices seeking all available information concerning [Krampf] as the subject of the data." She further stated that "[p]er University policies and procedures and instructions provided to these offices, all records, in any media, regardless of physical form, storage media or

[4] Under the MGDPA, a "[r]esponsible authority" is "the state official designated by law or by the commissioner as the individual responsible for the collection, use and dissemination of any set of data on individuals, government data, or summary data." Minn. Stat. § 13.02, subd. 16(a).

conditions of use, that were responsive were requested and were to be provided to the [Data Access and Privacy] Office as part of my inquiries."

McKinney identified by name more than forty individuals who were "contacted" and "asked to search for data," and stated that "[f]or those that did have data, other than attorney-client data, data of which [Krampf] was the subject were released to [Krampf] on or before November 15, 2018." She recounted that "the University's search for potentially responsive data included reviewing Google account data including emails, reviewing electronic files in multiple University databases and software programs, and searching for and reviewing paper files, including several bankers' boxes of personnel, student, and legal matters concerning [Krampf] located in cold, off-site storage locations." She also noted that human resources personnel searched for records using Krampf's "employee identification number, name, and other means," and that the health center and medical school searched for personnel-related records using Krampf's name.

Among the documents submitted in support of its motion for summary judgment, the University submitted fifteen emails, dated between 2007 and 2017, that it obtained from Krampf during discovery. Krampf asserted that these emails, which were communications between him and various University staff, were responsive to his MGDPA request but withheld from the data provided. These emails involved a wide variety of topics, including: correspondence about multiple job applications by Krampf; Krampf's offer to give a University employee a discount from his private business; the fact that Krampf left a business card on an acquaintance's door; a conversation about a professor's research poster; a University employee's request for a discount code; the death of a Stanford

University professor; a discussion of computer software; an attempt to schedule a phone call; and Krampf's mother's medical condition. A senior paralegal with the University stated in an affidavit that these emails involved two current employees who reported having no responsive data to Krampf's request and five former employees of the University. McKinney also stated in her affidavit that a third current employee involved in the emails also had no responsive data.

Krampf also submitted an affidavit in response to the University's summary judgment motion and attached several emails, including the following: (1) a late-November or December 2018[5] email to biotechnology grant awardees regarding another MGDPA request by Krampf; (2) a similar email from late 2017 or early 2018; (3) a 2010 letter from an Executive Vice Dean asking Krampf to "cease and desist" his "unfounded and disrespectful . . . inappropriate claims" and "repeated communications to this office, to legislators, gubernatorial candidates, and others" regarding a University staff member; (4) a 2010 email exchange with a University staff member disputing student debt statistics; and (5) two February 2018 grant applications that Krampf submitted on behalf of his company, BMT Laboratories. Krampf alleged that, based on these communications, he "knew that numerous additional emails and other government data responsive to [his] request existed but had not been provided."

The district court granted summary judgment in favor of the University and dismissed Krampf's claims. Krampf appeals.

[5] Because some documents include more than one date, we refer to a date range when describing them.

DECISION

I. Denial of Krampf's Motion to Amend the Complaint

"After a responsive pleading has been served, a plaintiff may amend the complaint 'only by leave of court or by written consent of the adverse party,' and 'leave shall be freely given when justice so requires.'" *U.S. Bank Nat'l Ass'n v. RBP Realty, LLC*, 888 N.W.2d 699, 705 (Minn. App. 2016) (quoting Minn. R. Civ. P. 15.01), *rev. denied* (Minn. Apr. 18, 2017). "Generally, the decision to permit or deny amendments to pleadings is within the discretion of the district court and will not be reversed absent a clear abuse of discretion." *Johns v. Harborage I, Ltd.*, 664 N.W.2d 291, 295 (Minn. 2003). But "[w]hether the district court has abused its discretion in ruling on a motion to amend may turn on whether it was correct in an underlying legal ruling." *Doe v. F.P.*, 667 N.W.2d 493, 500-01 (Minn. App. 2003), *rev. denied* (Minn. Oct. 21, 2003).

The district court denied Krampf's motion to amend his complaint because it determined that there was "undue delay" in Krampf's attempt to add two defendants and that Krampf's proposed declaratory judgment claim was futile. Krampf argues that the district court abused its discretion in denying his motion to amend his complaint because the district court had previously ordered him to amend his complaint.[6] We are not convinced for two reasons. First, Krampf does not substantively challenge the determinations of delay and futility or otherwise address the district court's reasons for

[6] Krampf does not argue on appeal that the district court erred by not addressing the portions of the proposed amended complaint alleging that the University provided false discovery responses or that the University's data access policy violated the MGDPA.

denying the motion to amend. *See Meyer v. Best W. Seville Plaza Hotel*, 562 N.W.2d 690, 694 (Minn. App. 1997) (noting that a district court does not abuse its discretion when it denies a request to amend on the basis that the requesting party "failed to act with due diligence in their attempts to amend"), *rev. denied* (Minn. June 26, 1997); *see also Adams v. Harpstead*, 947 N.W.2d 838, 845 (Minn. App. 2020) (stating that declaratory judgment "is not a remedy that is available to determine that a responsible authority violated the MGDPA"). Second, we do not agree that by directing Krampf to either "amend[] his complaint or . . . identify[] the documents he seeks," the district court suggested that it would permit any and all proposed amendments to the complaint.[7] We therefore discern no abuse of discretion in the district court's denial of Krampf's motion to amend his complaint.

II. Decision Granting Summary Judgment to the University

Krampf next argues that the district court erred when it granted summary judgment in favor of the University because the record includes evidence that the University failed to involve information technology personnel when responding to Krampf's data request and because the record includes evidence that the University did not provide data in its possession that was responsive to his MGDPA request.[8] We affirm the district court's

[7] Portions of Krampf's brief criticize the district court's decision to dismiss the complaint without prejudice in 2021 for his failure to sufficiently identify the data he sought from the University. We need not address this decision, however, because the district court vacated its dismissal after Krampf moved to amend his complaint.

[8] Krampf also argues that the University failed to respond to three of his discovery requests. Krampf's argument cannot prevail, however, because he did not make a motion to compel discovery and did not make additional discovery requests after the district court allowed him to do so. *See M.H. v. Caritas Fam. Servs.*, 488 N.W.2d 282, 289 (Minn. 1992) (stating

decision because there is no genuine issue of material fact as to whether the University violated the MGDPA.[9]

The MGDPA "regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities." Minn. Stat. § 13.01, subd. 3. It generally allows persons to "inspect and copy public government data at reasonable times and places" and requires a written explanation for any denial of access. Minn. Stat. § 13.03, subds. 3(a), (f). The MGDPA affords particular rights to individuals who are the subject of government data. Minn. Stat. § 13.04. An individual data subject may request to "be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential." *Id.*, subd. 3. "Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data." *Id.* "[W]hen the government violates the [MGDPA] by improperly denying a person access to data that the government is required by the Act to make available . . . the person denied access is an 'aggrieved person' under

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that appellants who made no motion to compel cannot now argue that they lack the facts to support their complaint).

[9] Krampf also makes the following four arguments to this court that he did not make to the district court: (1) statements in three emails between University employees indicate that the University failed to produce responsive data; (2) Krampf's follow-up communications with the University should be characterized as independent MGDPA requests and the University failed to respond to these MGDPA requests; (3) the University redacted data from its MGDPA response without explanation; and (4) disciplinary action should be taken against the district court judge. We decline to address these arguments. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." (quotation omitted)).

section 13.08, subd. 4(a) [of the MGDPA]." *Wiegel v. City of St. Paul*, 639 N.W.2d 378, 384 (Minn. 2002). Any "aggrieved person seeking to enforce the person's rights under [the MGDPA] or obtain access to data" may bring an action in district court to compel compliance with the MGDPA. Minn. Stat. § 13.08, subd. 4(a).[10]

A grant of summary judgment is appropriate "if the movant shows that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "We review the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its application of the law." *Montemayor v. Sebright Prod., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted). A genuine issue of material fact exists "when reasonable persons might draw different conclusions from the evidence presented." *Id.* (quotation omitted).

Krampf argues that the record contains evidence that the University failed to enlist the help of information technology personnel in responding to his request. We are not persuaded that the University's failure to involve information technology personnel creates a genuine issue of material fact regarding the completeness of its response. Krampf does not direct our attention to any provision of the MGDPA or any binding authority requiring

[10] In addition to an action to compel compliance under subdivision 4(a), the MGDPA authorizes injunctive relief, recovery of "any damages sustained," and, in the case of a "willful violation," recovery of "exemplary damages." Minn. Stat. § 13.08, subds. 1, 2. Although the complaint references each of these three provisions, on appeal, Krampf asserts that his only claim was under subdivision 4(a). We limit our analysis to that claim, and therefore need not analyze whether the alleged violations were "willful" or whether Krampf sustained damages.

a governmental entity to involve information technology professionals in its response to a data request.[11] Nor does he point to any evidence indicating that the University could not have provided a complete response without the help of information technology personnel. Similarly, Krampf asserts that nothing in the record confirms that the employees of the University who searched for data were "technologically competent." But the record also contains no evidence establishing the competence necessary to adequately search for data in this case. McKinney identified more than forty individuals across numerous University departments that were contacted in response to Krampf's request, and the record contains no evidence that any of these employees was unable to perform the tasks required of them. For these reasons, we conclude that the record does not establish a genuine issue of material fact regarding whether the technological abilities of the employees involved affected the completeness of the University's response.

Krampf also argues that various emails—some attached to the University's summary judgment motion and some attached to his response—indicate that the University did not provide all of the data that he requested. He contends that his possession of the emails, coupled with the University's failure to produce them, indicates that the University failed to provide a complete response to his MGDPA request. Again, we disagree. Some of the emails Krampf relies on for this argument were created more than ten years before Krampf's MGDPA request and involve staff who no longer work with the University.

[11] To the extent that portions of Krampf's arguments to this court could be construed as raising a separate claim that the University's response policies and procedures themselves violate the MGDPA, we decline to address this claim because Krampf did not make those allegations in his complaint.

Others involve staff who were asked to search for responsive data and responded that they did not have any. One of the emails that Krampf cites was sent *after* the University responded to his MGDPA request.[12] In short, for any of these emails to indicate a genuine issue of material fact, the record must contain some evidence that the University was in possession of them. *See*, *e.g.*, *Peterson v. Martinez*, No. A17-0355, 2017 WL 6418224, at *4 (Minn. App. Dec. 18, 2017) (nonprecedential opinion cited for its persuasive value, affirming summary judgment because appellant "offered no evidence that the . . . respondents possessed any [responsive] data"), *rev. denied* (Minn. Mar. 20, 2018); *Davis v. City of Minneapolis*, No. A06-1114, 2007 WL 2034290, at *4 (Minn. App. July 17, 2007) (nonprecedential opinion cited for its persuasive value, observing that "appellant simply argues that respondent is withholding information because appellant thinks respondent is withholding information," but that "[a]ppellant is not entitled as a matter of right to that which does not exist."). Because the record contains no such evidence, no genuine issue of material fact exists regarding the emails relied on by Krampf.

Affirmed.

[12] We also observe that Krampf is not the subject of many of the emails he relies on to make this argument, and many of the emails relate to topics such as requesting a discount code or discussing a third party's medical condition. These would not be responsive to Krampf's request. In addition, two of the most recent emails—the two 2018 grant applications that Krampf submitted to RMM on behalf of his company, BMT Laboratories—pertained to BMT Laboratories as an entity, not to Krampf as an individual. *See* Minn. Stat. § 13.04, subd. 3 (requiring government entities to produce "stored data on individuals"); Minn. Stat. § 13.02, subd. 8 (defining "[i]ndividual" as "a natural person").